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Action by W. F. Gravins against Walker D. Hines, as Director General of Railroads, operating the Chesapeake & Ohio Railroad. Judgment for the plaintiff, and defendant brings error. Reversed, and final judgment rendered for defendant.

D. H. & Walter Leake and Sherlock Bronson, all of Richmond, for plaintiff in error.

Bethel & Williams and M. J. Fulton, all of Richmond, for defendant in error.

CAMPBELL COUNTY *v.* HOWARD et al.

June 15, 1922.

[112 S. E. 876.]

1. Attorney and Client (§ 140*)—Measure of Compensation Is Reasonable Value of Services in Themselves and Not Benefits to Client.—The measure of compensation to which attorneys are entitled, for services rendered under an employment not fixing a definite compensation, is the reasonable value of the services rendered in themselves, and not the benefits to the client, though the results secured may be considered as bearing upon the efficiency of the services and thus upon their value on a quantum meruit.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

2. Attorney and Client (§ 140*)—Matters to Be Considered in Fixing Compensation Stated.—In determining the compensation recoverable by attorneys for services rendered under an employment fixing no definite compensation, the amount and character of the services, the responsibility imposed, the labor, time, and trouble involved, the character and importance of the matter in which they were rendered, the amount of money or the value of property affected, the professional skill and experience called for, the character and standing of the attorneys in their profession, and whether or not the fee is absolute or contingent, are to be considered.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

3. Appeal and Error (§ 1068 (4)*)—Error in Instruction as to Measure of Attorneys' Compensation Harmless, Where Amount Fixed Was Only Reasonable Compensation.—Instructions erroneously permitting the jury to measure the compensation of attorneys for services rendered a county by the benefits received by the county were harmless, where there was ample evidence to sustain the verdict on a quantum meruit and the compensation fixed by the verdict was only reasonable compensation on a quantum meruit.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

4. Attorney and Client (§ 167 (3)*)—Instruction Permitting Different Measure of Compensation than That Fixed by Contract Erroneous.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

—Instructions telling the jury in effect that, if services rendered a county by attorneys were rendered under a certain contract, they were entitled to such compensation as would be fair and just, in view of benefits received by the county, were erroneous, where the contract in question fixed the amount of compensation, as permitting a recovery measured otherwise than by the provisions of the contract.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 164.]

5. Appeal and Error (§ 1068 (4*))—Instruction Permitting Wrong Measure of Compensation Harmless, When Services Not Rendered under Contract as Hypothesized and No Other Verdict Proper.—Instructions permitting attorneys to recover fair and just compensation if services were rendered under a certain contract, though such contract fixed the compensation, were harmless, where the services in question were not rendered under such contract but under a subsequent employment not fixing the amount of compensation, and no other proper verdict could have been rendered.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 164.]

6. Trial (§ 243*)—Conflicting Instructions as to Measure of Compensation Erroneous.—Instructions telling the jury that attorneys were entitled to fair and just compensation for services, if rendered under a certain contract, were erroneous as conflicting with another instruction that the rights of the parties were to be determined according to the contract.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 164.]

7. Attorney and Client (§ 167 (3*))—Instruction that Rights of Parties Were Governed by Contract Erroneous, When Services in Controversy Not within Contract.—An instruction that an order of a board of supervisors constituted the contract between the county and attorneys, and that the rights of the parties were to be determined thereby, was erroneous, where the services in question were not within the terms of the order, and the uncontroverted evidence showed that they were not within the contemplation of the parties when the special contract was made.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

8. Attorney and Client (§ 144*)—Contract Held Not to Cover Services in Procuring Enactment of Statute.—A contract employing attorneys to defend the interests of a county before a city council and its committee, in proceedings to annex territory to the city, did not cover services in procuring the passage, by the General Assembly, of an act amending the annexation laws.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 150.]

9. Appeal and Error (§ 1064 (1*))—Conflict in Instructions Harmless, Where One Conflicted with Erroneous.—That instructions authorizing a recovery by attorneys of fair and just compensation con-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

flicted with another instruction, that the rights of the parties were to be determined by an order of a board of supervisors, constituting a contract between the parties, was harmless error, where such contract did not cover the services in question, and the instruction that the rights of the parties were governed thereby was erroneous.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

10. Counties (§ 202*)—Requirement as to Verification of Account against County for Services Held Not Jurisdictional.—Under Code 1919, § 2763, providing for what is practically a trial de novo, on appeal from the action of the board of supervisors on an account presented to them, the requirement of section 2759, that the time actually and necessarily devoted to the performance of the services for which an account is presented shall be verified by affidavit filed with the account, was not jurisdictional, where the pleadings and evidence on the trial in the circuit court were sufficient to support the judgment.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 685.]

11. Counties (§ 124 (1)*)—Contract Employing Attorneys on Fee Measured by Taxes Saved to County Not Illegal.—A contract employing attorneys under Code 1919, § 2728, to defend the interests of a county in proceedings by a city to annex territory for a definite fee, and one-third of all taxes saved to the county, was not illegal, as providing for misappropriation of the county and district levies to other purposes than those specified in the Constitution and statutes, the reference to tax levies being merely as a measure of the compensation.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 149.]

12. Counties (§ 49*)—Board Can Only Employ Counsel by Corporate Action at Meeting Duly Held.—Under Code 1919, § 2728, authorizing boards of supervisors to employ counsel, the board can only act so as to obligate the county at authorized meetings duly held and as a corporate body, by resolution duly adopted, and not by the action of its members separately and individually.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 683.]

13. Counties (§ 124 (2)*)—Employment of Attorneys without Formal Action Held Ratified by Subsequent Allowance of Account for Expenses.—Where attorneys, by agreement with the commonwealth's attorney, and individual members of the board of supervisors rendered services in procuring the passage by the General Assembly of an act amending the laws governing the annexation of territory to cities, a subsequent resolution of the board of supervisors allowing their account for expenses and referring to them as counsel for the county, held a ratification of the unauthorized action of the commonwealth's attorneys and individual members of the board, and an acceptance of the services binding the county to pay therefor, though

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the resolution provided that the amount was to be deducted from the attorneys' fee in defendant annexation proceedings under a different contract.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 671.]

14. Attorney and Client (§ 167 (3)*)—Instruction on Theory that Benefit to Client Was Basis of Recovery Properly Refused.—As the benefit to the county was not the proper measure of recovery by attorneys, for services rendered without express agreement as to their compensation, an instruction that there was no basis for a finding that the attorneys' services were beneficial to the county, etc., held properly refused.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 162.]

15. Contracts (§ 126*)—Services of Attorneys Held Not Illegal Lobbying Services.—Services of attorneys in procuring the passage of an act by the General Assembly in which they interviewed individual members of the Legislature and especially members of the committees, considering the proposed act, were not illegal lobbying services under Code 1919, § 4499, for which the law would imply no promise to pay, where they used only arguments addressed to the reason of the legislators.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 149.]

16. Counties (§ 113 (5)*)—Authorized to Employ Counsel to Render Services in Procuring Enactment of Legislation.—Under Code 1919, § 2728, authorizing boards of supervisors to employ counsel, a board had authority to employ attorneys to assist in procuring the amendment of the law governing annexation of territories to cities, by arguments addressed only to the reason of members of the Legislature.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 667.]

17. Accord and Satisfaction (§ 10 (2)*)—Collection of Warrant Not Accord and Satisfaction, Where County Paid It with Knowledge of Repudiation of Condition on Which Issued.—An attorney's acceptance of payment of a county warrant, for expenses issued pursuant to a resolution stating that it was to be deducted from his fee, did not constitute an accord and satisfaction at common law or under Code 1919, § 5765, where he promptly repudiated such condition, and, with constructive notice of such repudiation, the county paid the warrant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 81.]

18. Accord and Satisfaction (§ 1*)—Offer to Accept Less than Claimed Held an Accord.—An offer of an attorney, at meeting of board of supervisors at which there was objection to an account for services presented by him, that if they would pay a less amount he would accept it, amounted to an accord under Code 1919, § 5765, though not at common law.

[Ed. Note.—For other cases, see 1 Va.-W. Va., Enc. Dig. 81.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

19. Accord and Satisfaction (§ 17*)—Accord Must Be Executed While in Existence.—The execution of an accord, while it is in existence, is as much necessary to constitute an accord and satisfaction as the accord itself.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 81.]

20. Accord and Satisfaction (§ 17*)—Accord Not Executed When without Consideration and Withdrawn before Payment.—Where a county never denied owing an attorney \$1,000 for services, the only dispute being as to his claim for further amount, his offer to accept \$1,000 in full satisfaction was a nudum pactum which he had a right to withdraw, and where, before actual payment and even before issuance of a warrant, he asked the board to reconsider its action and, after its refusal to allow any greater amount, appealed from such refusal, the action on the application for reconsideration or its subsequent payment of the warrant after the appeal was taken was not an execution of the accord, under Code 1919, § 5765, as the accord was not then in existence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 81.]

21. Accord and Satisfaction (§ 10 (2)*)—Payment of Warrant after Notice that It Was Not Accepted as Payment in Full Held to Waive Condition in Warrant.—A county, by payment of a warrant issued to an attorney in full payment for services after notice that he did not accept it as such, waived such condition.

Prentis, J., dissenting.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 637.]

Error to Circuit Court, Campbell County.

Proceeding on a claim by Volney E. Howard and another against the County of Campbell, appealed to the circuit court from the board of supervisors. Judgment for the claimants, and the County brings error. Affirmed.

A. H. Light, of Rustburg, and *Jno. G. Haythe*, of Lynchburg, for plaintiff in error.

Kemp & Barksdale, of Lynchburg, for defendants in error.

APPALACHIAN POWER CO. *v.* BURRESS.

Sept. 21, 1922.

[113 S. E. 744.]

1. Appeal and Error (§ 1002*)—Verdict on Conflicting Evidence Not Disturbed.—In an action for injury to a motor truck from a collision with a street car, evidence of defendant's negligence, though conflict-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.